IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1915 OF 2007.

Jayesh Nagindas Shah,
Age: 41 years, Occ.: Business,
Indian Inhabitant of Mumbai,
residing at 312/B, Patel Shopping
Centre, Chandavarkar Road,
Borivali (West), Mumbai 400 092. ... Petitioner.

Versus.

Smt.Dipti Jayesh Shah,
Age: 42 years, Occ.: Nil,
Indian Inhabitant of Mumbai,
residing at C/o.Sunil Rasiklal
Shah, A/32, Happy Home Apartment,
Sai Baba Nagar, Borivali (West),
Mumbai 400 092. ... Respondent.

Shri N.V.Gangal for the Petitioner.

Shri D.M.Joshi for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 29th June, 2007.

ORAL JUDGMENT.:

1. By this writ petition under Article 227 of the Constitution of India, the Petitioner-husband has taken exception to the Judgment and order dated 9th January 2007 passed by the learned Judge of the Family Court by which the Petitioner has been directed to pay interim maintenance at the rate of Rs.20,000/- per month to the Respondent-wife with effect from 17th July 2006.

2. The Petitioner married to the Respondent on 3rd September 2004 under the provisions of the Special

Marriage Act, 1954. According to the case of the Petitioner, from February 2006 the Respondent deserted him without any just cause or excuse. There are criminal complaints filed by the Respondent against the Petitioner. The Respondent filed a petition under section 18(2)(d) of the Hindu Adoption and Maintenance Act, 1956 praying for grant of maintenance at the rate of Rs.1,50,000/- per month. A prayer is also made in the said petition for grant of a separate residential flat admeasuring about 600 sq.ft. of carpet area at Borivali (West), Mumbai. The Respondent also prayed for a direction against the Petitioner enjoining him to pay Rs.5 lakhs towards medical expenses etc. An interim application was filed in the said petition by the Respondent. In the interim application, a prayer was made for payment of interim maintenance at the at the rate of Rs.1,50,000/- per month. A prayer was also made for grant of interim relief pending the final disposal of the petition directing the Petitioner to provide to the Respondent a residential flat admeasuring about 600 sq.ft. of carpet area in a housing society at Borivali (West), Mumbai. The further prayer in the application was for a direction to the Petitioner to pay a sum of Rs.5 lakhs to the Respondent.

3. In the said application it was contended that the Petitioner and his family members are industrialists

and are financially in a strong position. It is stated that the Petitioner and his family members were holding two factories with offices in an industrial estate at Kandivali (East), Mumbai. It was alleged that the members of the family of the Petitioner were having three private limited companies. It was alleged that one of the companies of the family by the name M/s.Kemex International Pvt.Ltd. was receiving rental income of Rs.75,000/- per month. It was alleged that the Petitioner was possessing a Honda City car as well as a Maruti 800 car. It is stated that the Petitioner was the owner of a plot of land at Wada, District Thane. It was alleged that the Petitioner was holding gold, jewellery and diamonds to the tune of Rs.50 lakhs. It was stated that the Petitioner has made investment in shares and stocks to the tune of Rs.2 crores. It was alleged that the minimum income of the Petitioner was Rs.3 lakhs per month.

4. The Application was contested by the Petitioner by filing a reply. In the reply, the Petitioner has stated that there were only two office premises at B-6 and B-7 in the Industrial Estate at Kandivali and there were no factories held by the family of the Petitioner at the said place. It is stated in the reply that the Petitioner was holding 20% shares of M/s.Kemex International Pvt.Ltd. and 20% shares of M/s.Cylinder

Engineering Pvt.Ltd. The Petitioner stated that M/s.Sun Pulverising Co. was a partnership firm in which his share was 20% in the profit and loss. He admitted that company known as Kemex International Pvt.Ltd. was having a building consisting of ground plus one storey at Vasai (East). He, however, denied that the said property is fetching a rental income as alleged by the Respondent. He stated that the Honda City car referred to by the Respondent was in the name of the Petitioner's father and the Maruti 800 car referred to by the Respondent was owned by M/s.Kemex International Pvt.Ltd. The Petitioner denied that he was holding gold, jewellery or diamonds and that he was having investment in shares and stocks to the tune of Rs.2 crores. He stated that the plot of land at Wada, District Thane referred to by the Respondent was in the name of M/s.Cylinder Engineering Pvt.Ltd.

5. The Petitioner denied that he was earning Rs.3 lakhs per month. He further stated that his yearly income was Rs.72,085/-. He stated that he was maintaining his son born from his first marriage. He stated that the said son was taking education in a school at Panchgani and he was required to contribute towards his share in the education expenses of the son.

6. The learned Judge of the Family Court referred

to the income tax returns produced by the Petitioner showing that during the assessment year 2006-2007 his income was only Rs.72,085/-. The learned Judge considering all the material on record came to the conclusion that it is not possible to believe that the yearly income of the Petitioner was only Rs.72,085/-. The learned Judge held that the Respondent was entitled to the monthly maintenance of Rs.20,000/-. However, the learned Judge rejected the other prayers in the interim application made by the Respondent.

7. The learned Counsel appearing for the Petitioner invited my attention to the details of the income of the Petitioner for the last five years incorporated in the statement annexed to the petition as Exhibit G. He submitted that by no stretch of imagination the amount of Rs.20,000/- could have been fixed as monthly maintenance by the trial Court. He pointed out that even going by the figures of income as reflected from Exh.G, the total taxable income of the Petitioner for the assessment year 2006-2007 was Rs.1,52,393/- and therefore, even if 50% of the income is to be paid as monthly maintenance the same could not have exceeded Rs.6000/- per month. He submitted that without recording a clear finding about the correct income of the Petitioner, the learned Judge of the Family Court has passed the impugned order only on the basis of a

guess work. He submitted that the Petitioner had honestly disclosed his correct income before the Family Court in the reply filed to the Application of the Respondent. He, therefore, submitted that the impugned order is perverse and deserves to be set aside.

8. The learned Counsel appearing for the Respondent pointed out that considering the fact that the Petitioner was holding 20% shares in the two private limited companies and 20% share in the loss and profit of the partnership firm, the learned Judge of the Family Court was justified in not accepting the figures of income mentioned by the Petitioner as true and correct. He pointed out the extent of properties held by the said private limited companies and the status of the Petitioner and his family members. He pointed that the son of the Petitioner born from his first wife was taking education in Vidyaniketan High School, Panchgani and the fee payable for the academic year 2007-2008 is Rs.66,000/-. He submitted that even assuming that the Petitioner is contributing 50% of the expenditure incurred on the education of his son, it is impossible to accept that his yearly income is only Rs.72,000/-. He pointed out that the material documents were not produced by the Petitioner. He invited my attention to the consent order passed in the Matrimonial Petition filed by the Petitioner and his first wife. He

pointed out that in the judgment delivered on 10th April 2003 it is stated that the Petitioner paid a sum of Rs.4 lakhs by way of lumpsum alimony to his first wife and a sum of Rs.3 lakhs by way of maintenance of the minor son Chirag. He, therefore, submitted that the figures of income disclosed by the Petitioner are not real and genuine and therefore, no interference is called for with the impugned order. He has relied upon various documents annexed to the affidavit-in-reply.

8. I have carefully considered the submissions. It is an admitted position that the Petitioner is holding 20% shares of M/s.Kemex International Pvt.Ltd.. Similarly he is holding 20% shares of M/s.Cylinder Engineering Pvt.Ltd. The Petitioner has admitted that he is having 20% share in the profits and losses of the partnership firm M/s.Sun Pulverising Co. The Petitioner has admitted that he is a Director of M/s.Kemex International Pvt.Ltd. and he is drawing a remuneration of Rs.60,000/- per annum. He has admitted that he is receiving a sum of Rs.12,500/- by way of remuneration from M/s.Sun Pulverising Co, and he is also getting by way of interest from the said partnership firm a sum of Rs.11,955/-.

9. At Exh.G to the petition, the Petitioner has given details of his income for the last five years. In

the said document, he has given details of the income from the two private limited companies and the aforesaid partnership firm. It must be stated that the Petitioner has not produced extracts of accounts of the said private limited companies as well as the said partnership firm and there are no document produced in support of the details incorporated in Exh.G. The said details disclose that in the assessment year 2002-2003 the taxable income of the Petitioner was Rs.2,29,828/- and for the assessment year 2006-2007 the taxable income was Rs.1,46,274/-. The income tax returns of the Petitioner are not placed on record.

10. The documents produced by the Respondent along with her affidavit show that on 10th April 2003 the Family Court disposed of the Matrimonial Petition between the Petitioner and his first wife. The said order records that the Petitioner paid a sum of Rs.4 lakhs towards lumpsum alimony of his first wife. He also paid a sum of Rs.3 lakhs towards maintenance of the minor son Chirag. According to the case of the Petitioner, his yearly taxable income for the assessment year 2003-04 was Rs.1,73,745/- and income for the earlier assessment year was Rs.2,29,828/-. The Petitioner has not explained as to how he paid the aforesaid amount of Rs.7 lakhs. In the reply filed to the application for maintenance before the Family Court,

the Petitioner has stated that his son Chirag is taking education in Vidyaniketan School at Panchgani and he is contributing his share towards the education expenses of his son. The Respondent along with her affidavit has placed on record the fact that the fee payable in the said school is Rs.66,000/- to Rs.68,000/- per year and thus the Petitioner must be contributing atleast Rs.33,000/- per year.

11. In the affidvit-in-reply the Respondent has stated that the Advocate for the Respondent had called upon the Advocate for the Petitioner to give inspection of various documents listed in the said letter dated 18th November 2006 sent by the Advocate for the Petitioner. By the said letter the Petitioner was called upon to produce income tax returns with balance sheet and profit and loss account as well as capital account of the Petitioner for the last seven years. The Petitioner was also called upon to produce the pass book of his provident fund account as well as pass books of his bank accounts. The Petitioner was also called upon to produce the details of bank lockers held by him, details of the demat account and holding of shares by him. It is stated in the affidavit that by a further letter dated 28th November 2006 the Advocate for the Respondent called upon the Petitioner to produce the said documents before the Family Court at the time of

hearing of the application for interim maintenance. It is stated in the reply that the Petitioner did not produce the aforesaid documents.

12. Considering the aforesaid aspects, it is very difficult to accept that the details mentioned in Exh.G disclose the correct income of the Petitioner. In fact this was a fit case to draw adverse inference against the Petitioner on account of his failure to produce the documents relating to his income. It is obvious that the figures incorporated in Exh.G do not disclose the correct income of the Petitioner.

13. Considering the status of the Petitioner as reflected from the admitted facts, the learned trial Judge has fixed the interim maintenance at the rate of Rs.20,000/- per month. As stated earlier, it is an admitted fact that the Petitioner has 20% shareholding in M/s.Kemex International Pvt.Ltd. and M/s.Cylinder Engineering Co.Pvt. He is also a Director M/s.Kemex International Pvt.Ltd. The Petitioner has 20% share in M/s.Cylinder Engineering Pvt.Ltd. and 20% share in M/s.Sun Pulverising Co. The aforesaid companies are holding properties. In view of the failure of the Petitioner to place material documents on record, and considering the status of the Petitioner and his family, the maintenance amount of Rs.20,000/- has been fixed by

the trial Court. It is very difficult to find fault with the said order in this petition under Article 227 of the Constitution of India. Hence the writ petition is rejected. Time of three months is granted to the Petitioner to pay the arrears on the basis of the impugned order. For a period of three months from today, ad-interim order permitting the Petitioner to pay Rs.15,000/- per month will to continue to operate.

Judge.